

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FORA FINANCIAL HOLDINGS, LLC

Plaintiff,

vs.

NEW YORK TRIBECA GROUP, LLC and JOHN
DOES 1-10,

Defendants.
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Case No. _____

DECLARATION OF JASON SOLOMON

I, Jason Solomon, of full age, hereby declare the following:

1. I am the Vice President of Partnership Development of Fora Financial Holdings, LLC (“Fora Financial”).

2. I make this declaration based upon personal knowledge and my review of business records maintained by Fora Financial.

Fora Financial’s Business

3. Fora Financial is a commercial lender and financial services company based out of New York, New York.

4. Fora Financial provides commercial financing and working capital solutions for small businesses through business loans and purchases of accounts receivables.

5. The small business lending market is incredibly competitive. Therefore, Fora Financial’s ability to identify and secure the business of small business/merchant customers is critical to its business.

6. To that end, Fora Financial has spent a significant amount of time, money and effort to solicit merchants and small businesses to become customers of Fora Financial. Fora Financial

works with independent sales organizations (“ISOs”) and brokers to identify potential customers, solicit applications for financing, and negotiate financing terms and other business deals.

Fora Financial’s Protected Information

7. Potential customers seeking financing from Fora Financial complete and then submit applications, either directly or indirectly through ISOs and brokers.

8. The applications contain various types of confidential, business-sensitive information and trade secrets, including, but not limited to, the merchants’ contact information, government-issued identification numbers, the terms of the proposed financing and the company’s financial information like revenues and even bank statements. Moreover, the very fact that any particular small business is seeking financing with Fora Financial is, in itself, an important and confidential piece of information, the confidentiality of which Fora Financial protects. Fora Financial expends significant time, resources, and money in protecting the confidentiality of this trade secret, confidential, and proprietary information (the “Protected Information”), including electronically stored information, by strictly limiting access to that information to certain key personnel.

9. Fora Financial maintains the confidentiality of its trade secrets and the Protected Information in the manner described in the accompanying Declaration of Kevin Ruthen (the “Ruthen Declaration.”)

10. Fora Financial derives a significant benefit from its trade secrets. Fora Financial has suffered and will continue to suffer a significant detriment from the misappropriation of its trade secrets and other confidential information related to its customers, including the misuse of that information by competitors and others not associated with Fora Financial.

Misappropriation of Fora Financial's Protected Information

11. On or about September 7, 2022, Fora Financial received reports from certain ISOs and other brokers that customers who had submitted applications to Fora Financial were being solicited by agents of New York Tribeca Group, LLC ("Tribeca").

12. Around the same time, Fora Financial began receiving similar reports directly from customers who had submitted applications to Fora Financial that they also were receiving unwanted calls and text messages, including from Tribeca's agents.

13. The contents of the communications between Tribeca's agents and Fora Financial's customers demonstrated to Fora Financial that Tribeca possessed Fora Financial's Protected Information and that Tribeca's agents knew that those customers had sought financing from Fora Financial. These communications included text messages, emails and recordings of phone calls, in which Tribeca personnel identified themselves as agents of Tribeca, informed the customers that Tribeca possessed certain non-public information and solicited the customer for Tribeca to provide financing.

14. These customers were being contacted by Tribeca's agents almost immediately after submitting applications to Fora Financial. Tribeca agents contacted some customers within a few days after submitting applications to Fora Financial, while other customers were contacted the very next day.

15. The communications showed that Tribeca's agents possessed and were using Fora Financial's Protected Information, including bank statements, personal contact information, business information (including tax identification numbers), and information about the proposed financing terms. For instance, Tribeca's agents stated, in text messages and phone calls, that they knew Fora Financial's customers had recently sought financing and that they possessed those

customers' bank statements, contact information, business-sensitive information like detailed revenue figures, and other Protected Information.

16. Many customers expressed surprise and anger to Fora Financial, to the ISO's and/or brokers and to Tribeca, about the fact that they were being solicited by entities other than Fora Financial, with some customers even assuming wrongly that Fora Financial had sold their contact information.

17. Specifically, on at least ten occasions since September 7, customers who had submitted applications to Fora Financial for new or renewal financing informed their sales contact at Fora Financial that they had been contacted by other brokers and/or lenders, including people who identified themselves to the customers as Tribeca's agents. These other brokers and lenders, including Tribeca's agents, informed the merchants that they were in possession of Fora Financial's Protected Information, including the proposed financing terms, bank statements, credit scores, customer contact information and other business-sensitive information.

18. In addition, ISOs and brokers notified Fora Financial that dozens of customers who had submitted applications to Fora Financial had communicated to the ISOs and brokers that the customers were being contacted by Fora Financial's competitors (including Tribeca's agents) soliciting financing. Two ISO's provided Fora Financial with lists of 31 and 22 merchants, respectively, that Fora Financial's competitors had solicited using Fora Financial's Protected Information, including bank statements, proposed financing terms, customer contact information and other personal and business-sensitive information.

19. The merchants Tribeca contacted or attempted to contact using Fora Financial's Protected Information include:

- Capital Cabinet and Closet Solutions LLC dba Bienal USA;
- DiMeglio Enterprises, Inc. dba Floor Coverings Int'l –Wake Forest;

- All Town Services LLC;
- Bar 1903 LLC;
- David J Peterson Trucking d/b/a Boxwood Cabinetry & Design;
- Frazier Ambus Logistic LLC d/b/a Fall guys;
- Deidre Dixon Marketing LLC dba Walcot Walcot Studio;
- Sunwest LLC dba Sunwest;
- Simms Automotive Repair LLC;
- Fully Equipped;
- Rocky Allen;
- T&S Auto;
- ADMI;
- Arsenal Logistics;
- Anthony Acosta Gadgets;
- Mulligans Auto Exchange;
- Durkee Fencing;
- K&V Home Improvements Inc.;
- R.I Unique Marble and Granite;
- Acetunes/All American;
- Blue Sabre Management;
- Schneider Audio Visual Systems Inc.;
- Mclain's Sporting Goods Stores LLC;
- Tattoo Removal Inc.;
- April Valdez (Paul);
- Takeoff Performance Systems LLC;
- Schmett & Company;
- JV Business Services;
- Richard Stonecipher Interiors Inc.;
- Mamlaka I Inc.;
- Gamers Guild AZ LLC;
- IndieBox Inc.;
- LMN Hospitality.

20. To confirm that Fora Financial's Protected Information was being misappropriated, and as more fully described in the Ruthen Declaration, Fora Financial began a process of placing (or having partners place) "honeypot" application traps in its system to confirm the misappropriation of its Protected Information.

Harm to Fora Financial's Business

21. Fora Financial derives a significant benefit from keeping its Protected Information confidential, has been harmed by the disclosure of such information and will continue to be harmed unless the Court immediately enjoins the disclosure and use of such information.

22. Merchants and potential customers have been repeatedly contacted by other lenders and brokers soliciting competing financing at exactly the time when those merchants and customers have submitted applications for financing with Fora Financial.

23. There is an immediate and irreparable risk of those customers switching their business to Fora Financial's customers. On information and belief, some customers have already switched their business to Fora Financial's customers.

24. Moreover, the customers who are being harassed by Fora Financial's competitors, including Tribeca, have expressed confusion and anger as to how those competitors could have acquired the Protected Information. The misconduct of others who are misappropriating Fora Financial's Protected Information is therefore being ascribed to Fora Financial and in some cases has led customers to believe that Fora Financial is voluntarily selling its Protected Information.

25. This is damaging and has damaged Fora Financial's goodwill with merchants and potential customers, and has resulted in the loss of existing customers.

26. In addition, the partners (ISOs, brokers and others) that are critical to Fora Financial's business could lose confidence in the privacy of Fora Financial's Protected Information if the Court does not enjoin the continued misappropriation of that Protected Information.

27. In fact, some ISOs and brokers have stopped placing merchant applications with Fora Financial and refuse to share potential customer data because of the misappropriation of the Protected Information.

28. Declining originations materially impact Fora Financial's cost of capital in a rising inflation and economically declining market.

29. Fora Financial will continue to suffer a loss to its business reputation and customer confidence if its Protected Information continues to be disclosed, used and otherwise misappropriated.

I declare under penalties of perjury under the laws of the United States and Massachusetts that the foregoing is true and correct to the best of my knowledge.

Dated: October 6, 2022

 10/6/2022
Jason Solomon